

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.02.2021

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CRL.O.P.No.878 of 2021

in

Crl MP No.664 of 2017

1. S.Kaliyamoorthy
2. K.Mallika
3. K.Karunamoorthi
4. K.Kannathasan

...Petitioner/Accused

Vs.

1. The State
rep.by the Inspector of Police,
All Women Police Station,
Sirkali

2. Jesintha Arputha Mary

...Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to quash the proceedings in P.R.C.No.33 of 2014 pending before the Judicial Magistrate, Sirkazhi, on the

basis of the first information report registered by the 1st respondent in Crime No.1 of 2014 on 13.01.2014 under Section 498(A) of IPC.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.C Raghavan
Government Advocate for R1
R2 - no appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in P.R.C.No.33 of 2014, pending on the file of the learned Judicial Magistrate, Sirkali.

2. The case of the prosecution is that the 2nd respondent had a affair with one Kannan, who is arrayed as A1. The petitioners 1 and 2 are the father and mother of A1 and the petitioners 3 and 4 are the brothers of A1. These petitioners have been arrayed as A2 to A5. When A1 and the 2nd respondent had a affair and it also developed into a physical relationship and as a result of the same,

the 2nd respondent became pregnant. This was informed by the 2nd respondent to A1 in the year 2013, when the 2nd respondent was eight months pregnant. Thereafter, A1 is said to have taken the 2nd respondent to his residence and he thereafter left. The 2nd respondent gave birth to a girl child on 06.08.2013. It is alleged that none of the accused persons came and visited the child and when the 2nd respondent attempted to go to the residence of her husband, it is stated that the petitioners had abused her in a filthy language pointing out to her caste and thrown her away from the house.

3. The respondent police on completion of the investigation filed a final report before the Court below for an offence under Section 498A, 109 IPC r/w 3(1) (w) (i) (ii) 3(1) (X) SC/ST Act. Aggrieved by the same, the petitioners, who are arrayed as A2 to A5 have approached this Court.

4. Heard the learned counsel for the petitioner and Mr.C.Raghavan, learned Government Advocate for R1. The 2nd respondent has been served with notice and her name has also been printed in the cause-list, there is no appearance either in person or through counsel.

5. A reading of the final report shows that the petitioners were nowhere in the scene, when the affair was going on between A1 and the 2nd respondent from the year 2012 onwards. The petitioners came to know about the affair, even as per the final report, only during the month of June 2013, when the 2nd respondent was eight months pregnant. Thereafter, the 2nd respondent delivered the child and it is alleged that when she attempted to get into the house of the petitioner, she was abused in her caste name and was thrown out of the house. The respondent

police in the course of investigation have examined LW1 to LW5 who speak about the incident. LW1 is the 2nd respondent, LW2 is her father, LW3 is her brother, LW4 is her brother and LW5 is some distant relative. The statements given by all these witnesses are almost similar. It is stated that when the defacto complainant attempted to enter the house of the petitioner after she delivered the child, there was a wordy quarrel and at that point of time, she is said to have been abused by using her caste name.

6. The defacto complainant alleges that the petitioners did not allow her to get into the house and she was pushed away from the house by abusing her. The other witnesses have also given statements to the very same effect.

7. The materials available on record does not make out an offence under Section 498A of IPC, since the defacto complainant

and A1 never had a husband and wife relationship and there was no marriage between them and there was only an affair that was going on between them. The petitioners were not aware about this affair and they come into the scene at the fag end, when the defacto complainant was eight months pregnant. The only allegation that has been made against the petitioners at this point of time is that they have abused the defacto complainant in filthy language by using her caste name.

8. In order to substantiate the offence under Section 3(1) (X) SC/ST Act, such utterance must have been made within the public view. To attract an offence under Section 3(1) (w) (i) and (ii) of the SC/ST Act, the same requires an intentional touch on a women belonging to Scheduled caste or Scheduled Tribe, which is sexual in nature without her consent or/and knowing that she belongs to the scheduled caste or scheduled tribe community.

Obviously, this offence cannot be put against the petitioners, since there is no such allegation against them. In the present case, there is nothing to show that the incident had taken place within public view. If any one had witnessed this incident, atleast they should have been examined as witnesses and their statement must be recorded. The same has not been done in the present case. Therefore, the basic ingredients to satisfy the requirements of the offence under 3(1) (X) of the SC/ST Act, has not been established by producing any *prima facie* material along with the final report. The Hon'ble Supreme Court had an occasion to deal with this issue in detail in the judgement in **[Hitesh verma Vs.State of Uttarkhand and another]** reported in **2020 3 Madras Weekly Notes Criminal 381.** सत्यमेव जयते

9. In view of the above, the continuation of the criminal proceedings as against the petitioners will amount to abuse of

process of Court and the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.PC. Accordingly, the proceedings as against the petitioners in P.R.C.No.33 of 2014 on the file of Judicial Magistrate, Sirkazhi, is hereby quashed.

10. This criminal original petition is allowed and there shall be a direction to the committal Court viz., the learned Judicial Magistrate, Sirkali, to immediately commit the case to the Sessions Court /Special Court, Sirkali within a period of four weeks from the date of receipt of copy of this order and the proceedings shall be completed by the Special Court, SC & ST Cases, Sirkali, within a period of three months thereafter. Consequently, the connected miscellaneous petition is closed.

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02.02.2021

Speaking/Non Speaking order

Index : Yes/No

Internet: Yes/No

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To

1. The State
rep.by the Inspector of Police,
All Women Police Station,
Sirkali
2. Judicial Magistrate, Sirkali,
3. Special Court for SC & ST Cases,
Sirkali.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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